No. 87-2006

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

VS.

LOWELL MADISON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

NEIL F. HARTIGAN
Attorney General, State of Illinois

TERENCE M. MADSEN *
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-2235

Counsel for Petitioner

TONY BRASEL
State's Attorney
Iroquois County Courthouse
Watseka, Illinois 60970

JOHN X. BRESLIN
Deputy Director
GARY F. GNIDOVEC
Staff Attorney
State's Attorneys Appellate Prosecutor
628 Columbus Street, Suite 402
Ottawa, Illinois 61350
(815) 434-7010

Of Counsel

* Counsel of Record

Printed by Authority of the State of Illinois (P.O. 34109—60—6-3-88)

QUESTION PRESENTED FOR REVIEW

Should the Good-Faith exception to the Fourth Amendment exclusionary rule apply to evidence obtained by police who acted in objectively reasonable reliance upon an opinion of an intermediate appellate court?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

In The

Supreme Court of the United States

October Term, 1987

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

LOWELL MADISON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, is reported at 149 Ill. App. 3d 592, 500 N.E.2d 1034 (3d Dist. 1986) (See Appendix B). The opinion of the Supreme Court of Illinois is reported at 121 Ill. 2d 195, 520 N.E.2d 374 (1988) (See Appendix C). The summary order of the Supreme Court of Illinois denying the petition for rehearing is not reported, but is attached hereto (See Appendix D).

JURISDICTION

The opinion of the Illinois Appellate Court, Third Judicial District, was filed on November 18, 1986. A timely petition for leave to appeal was filed by petitioner in the Illinois Supreme Court. On April 15, 1987, the Supreme Court of Illinois allowed the People's petition for leave to appeal. The opinion of the Supreme Court of Illinois was filed on February 11, 1988. A timely petition for rehearing was filed by petitioner in the Illinois Supreme Court on March 3, 1988. On April 5, 1988, the Illinois Supreme Court entered an order denying the People's petition for rehearing.

This court's jurisdiction is invoked under 28 U.S.C. section 1257(3). The instant petition for writ of certiorari is filed within 60 days of the Illinois Supreme Court's order denying petitioner's petition for rehearing. United States Supreme Court Rule 20; 28 U.S.C. section 1257(3). The decision of the Supreme Court of Illinois on the issue here raised was premised upon federal constitutional grounds and does not rest upon any independent state ground.

STATUTES INVOLVED

Illinois Revised Statutes 1983, chapter 95½, paragraph 5-403 provides that:

5-403. (1) Authorized representatives of the Secretary of State's Department of Police, other peace officers, and such other individuals as the Secretary may designate from time to time shall make inspections of individuals

and facilities licensed under Chapter 5 of the Illinois Vehicle Code for the purpose of reviewing records required to be maintained under Chapter 5 for accuracy and completeness and reviewing and examining the premises of the licensee's established place of business for the purpose of determining the accurary of the required records. Premises that may be inspected in order to determine the accuracy of the books and records required to be kept includes all premises used by the licensee to store vehicles and parts that are reflected by the required books and records.

(2) Persons having knowledge of or conducting inspections pursuant to this Chapter shall not in advance of such inspections knowingly notify a licensee or representative of a licensee of the contemplated inspection unless the Secretary or an individual designated by him for the purpose authorizes such notification. Any individual who, without authorization, knowingly violates this subparagraph shall be guilty of a Class C misdemeanor.

(3) The licensee or a representative of the licensee shall be entitled to be present during an inspection conducted pursuant to Chapter 5, however, the presence of the licensee or an authorized representative of the licensee is not a condition precedent to such an inspection.

(4) Inspection conducted pursuant to Chapter 5 may be initiated at any time that business is being conducted or work is being performed, whether or not open to public or when the licensee or a representative of the licensee, other than a mere custodian or watchman, is present. The fact that a licensee or representative of the licensee leaves the licensed premises after an inspection has been initiated shall not require the termination of the inspection.

(5) Any inspection conducted pursuant to Chapter 5 shall not continue for more than 24 hours after initiation.

(6) In the event information comes to the attention of the individuals conducting an inspection that may give rise to the necessity of obtaining a search warrant, and in the event steps are initiated for the procurement of a search

warrant, the individuals conducting such inspection may take all necessary steps to secure the premises under inspection until the warrant application is acted upon by a judicial officer.

(7) No more than 6 inspections of a premises may be conducted pursuant to Chapter 5 within any 6 month period except pursuant to a search warrant. Notwithstanding this limitation, nothing in this subparagraph shall be construed to limit the authority of law enforcement agents to respond to public complaints of violations of the Code. For the purpose of this subparagraph, a public complaint is one in which the complainant identifies himself or herself and sets forth, in writing, the specific basis for their complaint against the licensee.

(8) Nothing in this Section shall be construed to limit the authority of individuals by the Secretary pursuant to this Section to conduct searches of licensees pursuant to a duly issued and authorized search warrant.

STATEMENT OF THE CASE

On May 7, 1984, Secretary of State police officers Thompson and Pashal conducted a regulatory inspection of the Madison Salvage Yard located at Rural Route 1, Stateline Road, Sheldon, Illinois. The regulatory inspection was conducted pursuant to Illinois Revised Statutes 1983, chapter 95½, paragraph 5-401.2 and paragraph 5-403. With respect to the officers' primary duty of enforcing the Illinois Vehicle Code which includes the inspection of records, the officers requested that defendant permit them to review his business records. According to Officer Thompson, these records were kept in a school bus which was used by defendant as an office. Defendant consented to the request and voluntarily gave the business records to the officers.

After completing an inventory of the salvage yard, the officers inspected defendant's records. The records included, *inter alia*, certificates of title. During the course of their review of defendant's business records, 26 certificates of title with incomplete assignments were discovered. Upon completion of their review of defendant's business records, the officers retained possession of the 26 unlawfully-assigned titles. They issued a written receipt for the titles to defendant.

Subsequently, on May 23, 1984, 26 criminal complaints were filed against defendant charging that his possession of the 26 certificates of title with incomplete assignments violated Illinois Revised Statutes 1983, chapter 95½, paragraph 4-104(a)(2). (C. 3-28) On the day that the matter had been set for a jury trial, defendant filed a motion to suppress. The motion to suppress was heard simultaneously with the jury trial. Upon completion of the People's evidence, the trial judge granted defendant's motion to suppress. Insofar as the prosecutor was unable to proceed with the case as a result of the suppression order, the trial judge dismissed the case. (C. 2) Subsequently, the prosecutor filed a timely notice of appeal. (C. 36-37)

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

THE GOOD-FAITH EXCEPTION TO THE EXCLUSIONARY RULE APPLIES TO EVIDENCE WHICH IS OBTAINED BY POLICE WHO HAVE ACTED IN OBJECTIVELY REASONABLE RELIANCE UPON AN OPINION OF AN INTERMEDIATE APPELLATE COURT.

In *United States v. Leon*, 486 U.S. 897, 104 S.Ct. 3405, 3418-21, 82 L.Ed.2d 677 (1984), this Court ruled the Fourth Amendment exclusionary rule did not apply to evi-

dence obtained by police officers who acted in objectively reasonable reliance upon a search warrant issued by a neutral magistrate but which was subsequently found to be unsupported by probable cause. (*See also Massachusetts v. Sheppard*, 468 U.S. 981, 104 S.Ct. 3424, 3427-29, 82 L.Ed.2d 737 (1984)). Subsequently, in *Illinois v. Krull*, 480 U.S. ____, 107 S.Ct. 1160, 1167-68, 94 L.Ed.2d 364 (1987), this Court ruled that the Fourth Amendment exclusionary rule did not apply to evidence obtained by police who acted in objectively reasonable reliance on a statute authorizing warrantless administrative searches but which was subsequently found to violate the Fourth Amendment. Adhering to the rationale of *Leon* and *Krull*, the petitioner submits that the good-faith exception to the exclusionary rule is controlling in the situation wherein police officers act in objectively reasonable reliance upon an opinion of an intermediate appellate court interpreting a state statute, and that opinion is subsequently altered in a later decision. The instant case presents such a factual scenario.

In *People v. Potter*, 140 Ill. App. 3d 693, 489 N.E.2d 334, 95 Ill. Dec. 113 (3d Dist. 1986), the court was called upon to interpret the administrative search provision of Illinois Revised Statutes 1983, chapter 95½, paragraph 5-403. In *Potter*, local law enforcement sought to justify a search of an automobile dealership under the inspection provision of chapter 95½, paragraph 5-403. However, the appellate court determined that the search ran afoul of the statute's specific provisions. In interpreting the warrant provision of paragraph 5-403(6), the court concluded as follows:

> What truly concludes the matter, however, is Section 5-403 itself. . . Reading subsections (5), (6), and (8) together, the statutory import is clear: if within

> 24 hours information is uncovered which might give an officer probable cause to believe an offense has been committed, a search warrant should be obtained before any further searching or seizing is attempted. This was totally disregarded in the search of J&J Auto Sales. The search went well beyond 24 hours and long after evidence of criminal activity had been uncovered. . . . [489 N.E.2d at 337]

Thus, the conclusion drawn by the appellate court respecting paragraph 5-403(6)'s warrant requirement was that it was applicable only in those situations where an inspection would exceed the initial 24-hour time limitation contained in paragraph 5-403(5) and police had obtained probable cause to believe that there was criminal activity.

This interpretation of the statute by the appellate court in *Potter* is bolstered by the fact that the appellate justice who authored *Potter* also penned a dissenting opinion in the instant case in which he stated:

> The majority's reliance on *People v. Potter* (3d Dist. 1986), 140 Ill. App. 3d 693, is misplaced. In the instant case, the Secretary of State police conducted a routine inventory inspection of the defendant's premises and business records. The search was conducted in compliance with section 5-403 of the Illinois Vehicle Code (Ill. Rev. Stat. 1985, ch. 95½, par. 5-403), since it was performed for the purpose of reviewing records for accuracy and completeness, was initiated during regular business hours, and conducted for less than 24 hours as mandated by the statute. While conducting the inspection, the officers discovered 26 certificates of titles with incomplete assignments, which they seized after giving the defendant receipts. The officers then left the defendant's premises.
>
> A search warrant here would have been totally superfluous. The officers merely seized the certificates they discovered during the course of their administra-

> tive search. They intended to do no further searching as their inspection had already been completed. [*People v. Madison*, 149 Ill. App. 3d 592, 500 N.E.2d 1034, 1038-39, 102 Ill. Dec. 933 (3d Dist. 1986).]

Thus, the appellate court's decision in *Potter* defined the parameters of the warrant requirement of paragraph 5-403(6). As a result of the court's interpretation of the warrant requirement of paragraph 5-403(6), the Secretary of State's police reasonably relied upon that interpretation in formulating their procedures as to what they could and could not do with respect to an administrative inspection conducted pursuant to paragraph 5-403.

Subsequently, in the instant case, the appellate court again was called upon to address the administrative inspection procedure of paragraph 5-403. Specifically, the court was called upon to address the *seizure* of the 26 vehicle certificates of title with incomplete assignments. The issue presented was whether the Secretary of State's police were required under paragraph 5-403(6)'s warrant requirement to obtain a warrant to seize the certificates of title once discovered. The appellate court initially concurred with *Potter*'s original interpretation of paragraph 5-403. However, the court then ruled that *Potter* further ruled that, once the opened certificates of title were discovered, the police were required to obtain a search warrant before seizing the titles. *Madison*, 500 N.E.2d at 1037. The latter ruling by the court was clearly beyond the original decision of *Potter*. As noted by the authoring justice in *Potter* in his dissenting opinion in the instant case, *Potter* made no such ruling with respect to paragraph 5-403(6)'s warrant requirement. As a result, the appellate court's holding in *Madison* substantively altered the interpretation of paragraph 5-403(6) that had been issued originally in the former opinion of *Potter*.

Certainly, the Secretary of State's police justifiably relied upon the appellate court's interpretation of paragraph 5-403(6)'s warrant requirement in *Potter*. Under the *Potter* interpretation, a warrant was not required to *seize* open certificates of title found by the officers during the course of a valid administrative inspection. The Secretary of State's police had no way of knowing that the *Potter* interpretation of paragraph 5-403(6) was erroneous or otherwise so unreasonable that no one could reasonably rely upon that opinion as expressing the true intent of the statute's warrant requirement. As such, the good-faith exception to the Fourth Amendment exclusionary rule seems particularly pertinent here since the officers' reliance on the appellate court's interpretation of the statute's warrant requirement was objectively reasonable.

In addressing the petitioner's good-faith exception argument, the appellate court ruled that the exception was inapplicable. Specifically relying upon the facts of *Leon*, the court concluded that the good-faith exception was limited strictly to Fourth Amendment violations resulting from searches conducted pursuant to a technically invalid warrant. Since the search conducted in the case at bar was done without a search warrant, and since no search warrant ever issued, the court found the exception inapplicable. *Madison*, 500 N.E.2d at 1038.

It is now evident that the appellate court's limitation of the good-faith exception strictly to cases involving searches conducted pursuant to technically invalid warrants is erroneous. *Illinois v. Krull*, 107 S.Ct. 1167-68. It appears that the logic and approach of *Leon* is applicable to those situations in which police act in objective reliance upon something which apparently gives them the authority to act in a particular manner. In *Leon*, it was a search warrant. In *Krull*, it was a statute. Despite the

fact that the warrant or statute is later found invalid, the fact that the officers acted in reasonable objective reliance upon these items precluded the application of the exclusionary rule to the evidence uncovered during the course of what eventually was found to be illegal police conduct.

So too, the logic of *Leon* certainly applies to the instant situation wherein police objectively relied upon an interpretation of paragraph 5-403(6)'s warrant requirement. Although the interpretation of the statute was subsequently expanded in a later appellate court opinion, this does not render the police reliance upon the former opinion interpreting the statute unreasonable. Hence, the appellate court's ruling with respect to the application of the good-faith exception to the exclusionary rule is erroneous.

As in the appellate court, one of the issues asserted by the petitioner on appeal to the Supreme Court of Illinois was the applicability of the good-faith exception to the exclusionary rule. As in the appellate court, the petitioner maintained that the Secretary of State's police reliance upon the earlier determination in *Potter* precluded application of the exclusionary rule to the evidence in this case. However, in addressing the petitioner's good-faith argument presented, the Illinois Supreme Court stated as follows:

> Obviously, *Leon* and *Krull* are not controlling here, as the police officers in this case were neither relying on an invalid warrant nor on a statute later held to be unconstitutional. Instead, the State argues that we should extend the good-faith exception to situations where a police officer reasonably relies on his own interpretation of a valid statute in conducting a search and seizure, when that statute is later judicially interpreted to prohibit such seizure.

> We reject the State's argument because under *Leon* and *Krull* the officer's good faith alone is not sufficient to validate the search and seizure; the authority of a seemingly valid warrant or statute. Here, there is no such reliance, but quite the opposite. The officers were acting in defiance of, not reliance on, the language of a statute limiting the authority of officers to inspection of the premises and a records check for accuracy and completeness.
>
> Moreover, to adopt the extension of the good-faith exception proposed by the State would essentially eviscerate the exclusionary rule as it is currently enforced. Police officers would be encouraged to defy the plain language of statutes as written in favor of their own interpretations in conducting searches and seizures. Such a proposal, giving the police unlimited authority to conduct searches and seizures until specifically restricted by the legislature or the courts, is fundamentally at odds with the central purpose of deterring police conduct which underlies the exclusionary rule. [*People v. Madison*, 520 N.E.2d 380].

It is evident from the above quoted material that the Illinois Supreme Court's treatment of the petitioner's good-faith contention is erroneous for two reasons.

First, the Illinois Supreme Court makes the same error that it did in *Krull*, that is, attempting to factually limit *Leon* and *Krull* to situations involving either invalid search warrants or unconstitutional statutes. However, as this court's opinion in *Krull* indicates, application of the good-faith exception necessarily is not limited to these specific situations. The good-faith rationale of necessity requires that an officer's conduct be bottomed upon some objective justification for that conduct. It must be something other than his own subjective belief or interpretation. If an objective factor exists upon which the officer premises his conduct then the good-faith exception will

preclude exclusion of evidence when the objective factor for his conduct is found illegal. Thus, the Illinois Supreme Court has inappropriately analyzed the good-faith exception Argument here presented much as it did in *Krull*.

Secondly, the Illinois Supreme Court's characterization of the petitioner's argument is clearly erroneous. Neither in their brief nor at oral argument did the petitioner ever suggest that the officer's subjective interpretation of a statute sufficiently warrants invocation of the good-faith exception to the exclusionary rule. Such an interpretation so clearly violates the underlying rationale of *Leon* and *Krull* that it would never have been presented. This interpretation of the People's Argument by the Illinois Supreme Court is something that was simply not presented by petitioner.

In the final analysis, petitioner submits that those situations in which police act in objectively reasonable reliance upon an intermediate appellate court's interpretation of a statute which is later expanded or invalidated by a subsequent court opinion covering the same statute clearly fall within the parameters of the good-faith exception first enunciated in *Leon* and later applied in *Krull*. It is an anomalous situation to suggest that police reliance upon a search warrant or statute is envisioned by the good-faith exception but that police reliance upon an appellate court decision would not be encompassed. Under the circumstances of this case, petitioner submits that this court should grant the petition for writ of certiorari in order to address the application of the good-faith exception to the circumstances of this case.

CONCLUSION

For the reasons and argument stated herein, the petitioners respectfully request that a writ of certiorari issue to the Supreme Court of Illinois to review that court's decision which affirmed the judgment of the appellate court with respect to the issue addressing the application of the good-faith exception to the instant case.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General, State of Illinois

TERENCE M. MADSEN *
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-2235

Counsel for Petitioner

TONY BRASEL
State's Attorney
Iroquois County Courthouse
Watseka, Illinois 60970

JOHN X. BRESLIN
Deputy Director
GARY F. GNIDOVEC
Staff Attorney
State's Attorneys Appellate Prosecutor
628 Columbus Street, Suite 402
P.O. Box 654
Ottawa, Illinois 61350
(815) 434-7010

Of Counsel

* Counsel of Record

APPENDIX A

Transcript Of Proceedings Before Honorable Dwight W. McGrew On December 9, 1985

* * * * *

(AFTER RECESS)

THE COURT: Let the record show the Court is going to allow Defendant's motion to suppress. I do want to state for the record it appears that the only statutory authorization of the Secretary of State to seize records at the time of an inspection might be, or well, it will only be with regard to Section 2-111, that is the only thing in the statute at all that provides for immediate seizure of records--that provides for immediate seizure of records--and based upon the testimony of Officer Thompson that basically the defendant had no choice, he had to produce those records and the titles were taken from the premises without the defendant's permission. I could contemplate perhaps another situation where this would be proper without a search warrant, that being if the seizure was in conjunction with a legal arrest at the time, but the record in and of itself discloses that the taking of the titles from the defendant's premises was on May 7, 1984. There was no criminal charge made against the defendant until some ten days later indicating that the seizure was not in connection with an immediate arrest at the time of the seizure of the documents. Now if there had been permission by the defendant given the Secretary of State officers that they could take the titles at that particular time, there would have been no doubt that a search warrant would be necessary because they already had the evidence which they were looking for from which the charges

arose in the case. But since the record does show that the defendant had to produce the titles and that he did not give permission to the officers to take them, then the search warrant was required, so, on that basis the Court is allowing the motion to suppress.

* * * * *

APPENDIX B

Opinion Of The Appellate Court Of Illinois
Third Judicial District

[Filed November 18, 1986]

No. 3-86-0015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

vs.

LOWELL MADISON,

Defendant-Appellee.

Appeal from the Circuit Court of the
12th Judicial Circuit, Iroquois County, Illinois.
Honorable Dwight W. McGrew, Presiding Judge.

Mr. JUSTICE STOUDER delivered the Opinion of the Court.

The defendant, Lowell Madison, was charged with 26 counts of possessing certificates of title with incomplete assignment. (Ill. Rev. Stat. 1985, ch. 95½, par. 4-104(a)(2).) The defendant moved to suppress the evidence on the grounds that it was obtained through an illegal search and seizure. The defendant's motion was granted and the charges were dismissed. The State appeals, contending that the trial court erred in granting the defendant's motion. We affirm.

The defendant was the owner-operator of a motor vehicle salvage yard named Madison Salvage Yard. The Iroquois County State's Attorney's Office had received numerous complaints from neighbors living near the yard, apparently concerning the general condition of the premises. The State's Attorney relayed the complaints to the Secretary of State's Office.

Around 1 p.m. on May 7, 1984, two Secretary of State police officers went to the defendant's salvage yard. At the trial, Jim Thompson, one of the officers, testified that the officers advised the defendant that they were to inspect his premises and records pursuant to a complaint. Officer Thompson testified that the officers did not possess a search warrant.

Officer Thompson further testified that following an inspection of the vehicles stored in the yard, the officers asked to see the defendant's business records. The officers subsequently found 26 vehicle certificates of title with incomplete assignments of title. Officer Thompson stated that the officers took possession of the 26 certificates, giving the defendant a receipt for them. Officer Thompson admitted that while the defendant cooperated with the officers and did not object to the search, the defendant never gave the officers permission to take the certificates.

On May 17, 1984, the defendant was charged with 26 counts of possession of certificates of title with incomplete assignment. On December 9, 1984, the defendant filed a pre-trial motion to suppress the certificates because they were taken in violation of the Fourth Amendment prohibition against warrantless searches. The trial court granted the motion and summarily dismissed the charges. The State brings this appeal.

On appeal, the State contends that the trial court erred in allowing the defendant's motion because the search and seizure of the certificates of title were not unreasonable. The State musters a number of arguments in defense of its contention.

First, the State argues that the search and seizure were permitted under section 5-403 of the Illinois Vehicle Code. (Ill. Rev. Stat. 1985, ch. 95½, par. 5-403.) The State argues that section 5-403 provides authority for a valid warrantless search in the form of a records check.

Section 5-403 allows the Secretary of State to conduct under certain restrictions, periodic warrantless inspections of an automobile dealer's premises and records. The relevant part of section 5-403 of the Vehicle Code provides:

> "(1) Authorized representative of the Secretary of State including Officers of the Secretary of State's Department of Police, other peace officers, and such other individuals as the Secretary may designate from time to time shall make inspections of individuals and facilities licensed or required to be licensed under Chapter 5 of the Illinois Vehicle Code for the purpose of reviewing records required to be maintained under Chapter 5 for accuracy and completeness and reviewing and examining the premises of the licensee's established place of business for the purpose of determining the accurary of the required records. Premises that may be inspected in order to determine the accuracy of the books and records required to be kept includes all premises used by the licensee to store vehicles and parts that are reflected by the required books and records.
>
> * * *
>
> (4) Inspection conducted pursuant to Chapter 5 may be initiated at any time that business is being conducted or work is being performed, whether or not open to the public or when the licensee or a representative of the licensee, other than a mere custodian

or watchman, is present. The fact that a licensee or representative of the licensee leaves the licensed premises after an inspection has been initiated shall not require the termination of the inspection.

(5) Any inspection conducted pursuant to Chapter 5 shall not continue for more than 24 hours after initiation.

(6) In the event information comes to the attention of the individuals conducting an inspection that may give rise to the necessity of obtaining a search warrant, and in the event steps are initiated for the procurement of a search warrant, the individuals conducting such inspection may take all necessary steps to secure the premises under inspection until the warrant application is acted upon by a judicial officer.

(7) No more than 6 inspections of a premises may be conducted pursuant to Chapter 5 within any 6 month period except pursuant to a search warrant. Notwithstanding this limitation, nothing in this subparagraph shall be construed to limit the authority of law enforcement agents to respond to public complaints of violations of the Code. For the purpose of this subparagraph, a public complaint is one in which the complainant identifies himself or herself and sets forth, in writing, the specific basis for their complaint against the licensee.

(8) Nothing in this Section shall be construed to limit the authority of individuals by the Secretary pursuant to this Section to conduct searches of licensees pursuant to a duly issued and authorized search warrant." Ill. Rev. Stat. 1985, ch. 95½, par. 5-403.

In *People v. Potter* (3rd Dist., 1986), 140 Ill. App. 3d 693, 489 N.E.2d 334, this court discussed section 5-403. We held, pursuant to subsections (5), (6) and (8) of section 5-403, that "if within 24 hours information is uncovered which might give an officer probable cause to believe an offense has been committed, a search warrant should

be obtained before any further searching or seizing is attempted." 140 Ill. App. 3d 693, 697-98, 489 N.E.2d 334, 337.

In the case at bar, we agree with the State that under section 5-403 the Secretary of State possessed the authority to inspect the defendant's premises and business records. A review of the record reveals that the officers conducted their inspection in compliance with section 5-403. However, under *Potter* we find that when the officers discovered the certificates with incomplete assignments, they should have obtained a search warrant before attempting to seize them. This they failed to do, thereby rendering the seizure of the certificates unlawful.

The State also contends that the search and seizure were not unreasonable considering the minimal intrusion, the cooperative conduct of the defendant, and the lesser justifiable expectation of privacy for scrap processors. We disagree.

First, the intrusion was more than minimal because, as stated earlier, while the investigation of the defendant's yard was properly conducted within section 5-403, the seizure of the certificates was not lawful. Second, while the defendant cooperated with the officers during the investigation, he never gave his permission to either conduct the investigation or seize the certificates. It is well settled that mere acquiescence to authority of police does not constitute consent. (*Bumper v. North Carolina* (1968), 391 U.S. 543, 20 L. Ed.2d 797, 88 S. Ct. 1788.) Third, while the defendant, as a scrap processor, may have had a lesser justifiable expectation of privacy than a person in a private dwelling in a criminal search, this was an administrative investigation where the procedures to conduct the investigation and any possible seizure of evidence are specifically governed by statute.

The State argues that in addition to section 5-403, the Secretary of State is authorized under section 2-111 of the Vehicle Code to take possession of unlawfully issued certificates of title. Specifically, the State argues that the certificates of title in question were unlawfully issued to the defendant because the titles lacked complete assignment.

Section 2-111 provides as follows:

> "Seizure of documents and plates. The Secretary of State is hereby authorized to take possession of any certificate of title, registration card, permit, license, registration place, plates, or registration sticker issued by him upon expiration, revocation, cancellation or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued. Police officers who have reasonable grounds to believe that any item or items listed in this section should be seized shall request the Secretary of State to take possession of such item or items." Ill. Rev. Stat. 1985, ch. 95½, par. 2-111.

We disagree with the State's interpretation of section 2-111. We read the section to permit the Secretary of State to take possession of certificates unlawfully issued by the Secretary of State but not to support the instant seizure. Here, this section did not give the officers authority to seize certificates of title that were in fact lawfully issued by the Secretary of State.

The State argues additionally that in any event a warrant was not necessary because there were exigent circumstances. The State contends that had the officers left the certificates with the defendant, he could have filled in the blank assignment sections. The State also points out that the inspection began in the afternoon. The State claims that at the time by which the inspection was to

be completed, it would have been too late to obtain a search warrant. An officer would have been required to stay overnight to secure the premises. Therefore, the State concludes, there were exigent circumstances such that a warrantless seizure was constitutionally permissible.

The validity of a warrantless search and seizure must be determined on the basis of whether the State has shown that the exigencies of the situation made that course of conduct imperative. (*People v. Loggins* (1st Dist., 1985), 134 Ill. App. 3d 684, 480 N.E.2d 1293.) The State has failed to prove that the situation was imperative to justify a warrantless seizure. Other than the assertion by the State in its brief, there is nothing before us to indicate that the officers had insufficient time to return to get a search warrant before the courthouse closed. We find that exigent circumstances did not exist to permit the warrantless seizure of the certificates.

The State's next argument, that the certificates were taken in the plain view of the officers, is without merit. As an exception to the prohibition against warrantless searches, the plain view doctrine requires, *inter alia*, that the evidence come inadvertently into the officer's view. (*People v. Columbo* (1st Dist., 1983), 118 Ill. App. 3d 882, 455 N.E.2d 733.) In the instant case, it can hardly be said that the certificates came inadvertently into the officer's view. The purpose of the search was to inspect the defendant's business records, including any certificates of title in his possession.

Finally, the State argues that the good faith exception to the exclusionary rule should apply. This exception applies only to good faith violations of the Fourth Amendment resulting from searches conducted pursuant to technically invalid warrants. (*U.S. v. Leon* (1984), 468 U.S.

____, 82 L. Ed. 2d 677, 104 S. Ct. 3405.) Here, the exception is inapplicable because the search was conducted without a search warrant, nor was such a warrant ever issued.

Based on the foregoing, we find that the trial court properly excluded the certificates of title from evidence on the grounds that they were obtained through an invalid, warrantless seizure.

Accordingly, the judgment of the circuit court of Iroquois County is affirmed.

Affirmed.

SCOTT, P.J., concurs.
HEIPLE, J., dissents.

Mr. JUSTICE HEIPLE dissenting:

The majority's reliance on *People v. Potter* (3rd Dist., 1986), 140 Ill. App. 3d 693 is misplaced. In the instant case, the Secretary of State police conducted a routine regulatory inspection of the defendant's premises and business records. The search was conducted in compliance with section 5-403 of the Illinois Vehicle Code (Ill. Rev. Stat. 1985, ch. 95½, par. 5-403) since it was performed for the purpose of reviewing records for accuracy and completeness, was initiated during regular business hours, and continued for less than 24 hours as mandated by the statute. While conducting the inspection, the officers discovered 26 certificates of title with incomplete assignments, which they seized after giving the defendant receipts. The officers then left the defendant's premises.

A search warrant here would have been totally superfluous. The officers merely seized certificates they discovered during the course of their administrative search. They intended to do no further searching as their inspection had already been completed.

The facts in *Potter* are vastly different. In *Potter*, the Secretary of State police suspected the defendants had engaged in illegal activities. Since they were unable to obtain a search warrant, they conducted a "fishing expedition" under the guise of a section 5-403 administrative search which continued for five days, long after criminal activity was discovered. On those facts, we held that "if within 24 hours information is uncovered which might give an officer probable cause to believe an offense had been committed, a search warrant should be obtained before any further searching or seizing is attempted." 140 Ill. 3d 693, 697-98, 489 N.E.2d 334, 337.

A search warrant in cases involving facts similar to those in *Potter* serves to ensure that the fourth amendment's prohibition against unreasonable searches and seizures is not violated. A search warrant in circumstances such as those presented in the instant case serves no useful purpose and will only thwart the attempts of officers seeking to guarantee compliance with the Illinois Vehicle Code. The defendant's rights were not violated by this search and seizure.

Therefore, I dissent from the holding of the majority and would reverse the trial court.

APPENDIX C

Opinion Of The Supreme Court Of Illinois

(No. 64584.—Judgment affirmed.)

THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. LOWELL MADISON, Appellee.

Opinion filed February 11, 1988.—Rehearing denied April 5, 1988.

JUSTICE SIMON delivered the opinion of the court:

On May 17, 1984, defendant was charged with 26 counts of possession of a motor vehicle certificate of title with incomplete assignment, in violation of section 4-104 of the Illinois Vehicle Code (Ill. Rev. Stat. 1983, ch. 95½, par. 4-104). At trial, the circuit court of Iroquois County granted defendant's motion to suppress evidence of the incomplete titles because the evidence resulted from an illegal search and seizure, and subsequently dismissed the case. The appellate court for the third district affirmed. (149 Ill. App. 3d 592.) We allowed the State's appeal pursuant to Supreme Court Rule 315(a) (107 Ill. 2d 315(a)).

Defendant was the owner and operator of Madison Salvage Yard in Iroquois County. Defendant's neighbors complained about the yard to the State's Attorney, who in turn alerted the Secretary of State's office. The complaints concerned the condition of the premises. Following this notice, two Secretary of State police officers went without a search warrant to defendant's salvage yard to conduct an inspection. The officers inventoried the vehicles in the yard and reviewed defendant's business records, whereupon they discovered 26 vehicle certificates of title

with incomplete assignments of title. Defendant was given a receipt for the 26 titles, and the officers took them into their possession. Although defendant cooperated with the officers and did not object to the inspection, he did not give the officers permission to seize the 26 titles.

Licensed salvage yards are regulated under chapter 5 of the Illinois Vehicle Code. Article IV of chapter 5, entitled "Records Required to be Kept" (Ill. Rev. Stat. 1983, ch. 95½, pars. 5-401 through 5-404), specifies the business records yards must keep, details the State's right to inspect these records, and outlines the possible consequences for failure to keep required records. Section 5-403 permits authorized representatives of the Secretary of State, including police officers, to perform inspections of the records and premises of salvage yards for the purpose of determining the accuracy and completeness of the required records. No warrant is required to initiate or conduct these inspections, but subsection (6) provides that:

> "In the event information comes to the attention of the individuals conducting an inspection that may give rise to the necessity of obtaining a search warrant, and in the event steps are initiated for the procurement of a search warrant, the individuals conducting such inspections may take all necessary steps to secure the premises under inspection until the warrant application is acted upon by a judicial officer." Ill. Rev. Stat. 1983, ch. 95½, par. 5-403(6).

The issue presented by this case is whether, when police officers have discovered evidence of a crime during the course of a lawful administrative inspection conducted pursuant to section 5-403 of the Illinois Vehicle Code (Ill. Rev. Stat. 1983, ch. 95½, par. 5-403), the officers must obtain a warrant before seizing the evidence. The State argues that the trial and appellate courts erroneously interpreted the warrant requirement of section 5-403, and therefore

the evidence seized by the officers in this case should not have been suppressed. The State contends that officers should not be required to obtain a warrant before seizing evidence of criminal violations uncovered during an administrative inspection.

There has been no question raised as to the constitutionality of the statutory scheme authorizing the inspections, or to the specific requirements and restrictions imposed therein on administrative inspections. Thus, our decision in this case does not turn on any fourth amendment analysis, but only upon an interpretation of our State statute.

Under the regulatory scheme created by the legislature in section 5-401 *et seq.*, the Secretary of State police officers were authorized to conduct a warrantless inspection of defendant's salvage yard for the limited purpose of checking the accuracy and completeness of defendant's records. To determine whether the officers were entitled to seize evidence discovered during the inspection, however, we must turn to the language of the statute. The cardinal rule of statutory construction is that courts "must ascertain and give effect to the legislature's intention in enacting the statute. In doing so courts must give the language of the statute its plain and ordinary meaning. * * * ' "This is to be done primarily from a consideration of the legislative language itself, which affords the best means of its exposition." ' " *Maloney v. Bower* (1986), 113 Ill. 2d 473, 479, quoting *Franzese v. Trinko* (1977), 66 Ill. 2d 136, 139; *Western National Bank v. Village of Kildeer* (1960), 19 Ill. 2d 342, 350.

The language of section 5-403(6) is not so vague as to preclude understanding of and adherence to its plain meaning. Nothing in the statute permits seizure of rec-

ords or other evidence uncovered as a result of an inspection. As we read it, the plain language of the statute contemplates that officers obtain a warrant before seizing any evidence discovered during the course of an inspection. Any information uncovered that could serve as the basis for criminal prosecution makes obtaining a warrant necessary because gathering evidence for criminal prosecutions is outside the narrow scope of authority—to check the accuracy and completeness of records—given the State to conduct administrative inspections. It is a fundamental premise of both State and Federal law that in the absence of exigent circumstances or some other exception to the warrant requirement, no evidence to be used in a criminal prosecution may be sought or seized without a lawful warrant. (*Frank v. Maryland* (1959), 359 U.S. 360, 365, 3 L. Ed. 2d 877, 881, 79 S. Ct. 804, 808 ("evidence of criminal action may not * * * be seized without a judicially issued search warrant").) Therefore, any evidence seized by police officers without a warrant during an administrative inspection under section 5-403 is evidence seized outside the officers' limited authority under the statute and must be excluded. Thus, we agree with our appellate court that "when the officers discovered the certificates with incomplete assignments, they should have obtained a search warrant before attempting to seize them. This they failed to do, thereby rendering the seizure of the certificates unlawful." 149 Ill. App. 3d 592, 596; see also *People v. Potter* (1986), 140 Ill. App. 3d 693, 697-98 ("[I]f within 24 hours information is uncovered [in an administrative inspection] which might give an officer probable cause to believe an offense has been committed, a search warrant should be obtained before any further searching or seizing is attempted").

The State argues that requiring a police officer to obtain a warrant to seize evidence where the evidence has already been uncovered in the course of a valid administrative search would be "superfluous" because under these circumstances the warrant requirement serves no useful purpose. The State concludes that the legislature could not possibly have intended to require a warrant for seizure of evidence in such cases.

What the State essentially seeks is an interpretation of the statute that in effect reads out the language requiring a warrant after discovery of criminal evidence. We cannot endorse such an interpretation, however, as the legislature's inclusion of that language must be deemed to be intentional, and we will not interpret a statute to render meaningless its clear language. " ' "There is no rule of construction which authorizes a court to declare that the legislature did not mean what the plain language of the statute imports." ' " (*County of Du Page v. Graham, Anderson, Probst & White, Inc.* (1985), 109 Ill. 2d 143, 151-52, quoting *People ex rel. Scott v. Schwulst Building Center, Inc.* (1982), 89 Ill. 2d 365, 371.) If there were no statutory language requiring a warrant, this would be a different case and we might find the search and seizure conducted here unobjectionable under current fourth amendment doctrine. (See *Michigan v. Clifford* (1984), 464 U.S. 287, 294, 78 L. Ed. 2d 477, 484, 104 S. Ct. 641, 647 ("If evidence of criminal activity is discovered during the course of a valid administrative search, it may be seized"); *Texas v. Brown* (1983), 460 U.S. 730, 739, 75 L. Ed. 2d 502, 512, 103 S. Ct. 1535, 1542 ("[I]f, while lawfully engaged in an activity in a particular place, police officers perceive a suspicious object, they may seize it immediately").) But where, as here, a State statute imposes additional restrictions on the manner in which warrantless

searches are to be conducted, we cannot ignore the language of the statute or interpret it in such a way as to render the restrictions meaningless.

Although the plain language of the statute compels our decision in this case, and therefore we need not turn to the legislative history of the statute for guidance, we note that the legislative history proffered by the State in support of their argument does not demonstrate a legislative intent to permit seizures in the course of administrative inspections. In fact, in explaining the bill to members of the Senate, Senator Chew stated that:

> "This is a bill that was designed by the Motor Vehicle Laws, and it deals with auto theft and chop-shops plus parts. And it merely allows the Secretary of State or his nominee to make unannounced inspections to ascertain whether any parts on the premises were stolen or do not have . . . the proper * * * number on them *and that's all it does.*" (Emphasis added.) 82d Ill. Gen. Assem., Senate Proceedings, May 20, 1982, at 41.

In response to questions, Senator Chew made clear that the inspection authorized by statute "is not a search, it's just an inspection to ascertain the kind of parts that are on the premises." (82d Ill. Gen. Assem., Senate Proceedings, May 20, 1982, at 42.) Further, he stressed that:

> "I don't want the word search to overcast the inspection. It isn't necessary to have a search warrant to inspect. If you were there to search the place, in the sense of searching, it's necessary to have a warrant, so any time a search is to be had, the judge would have to issue . . . a search warrant * * * and what we're trying to do is to give the Secretary of State's Office the authority to go in and inspect, not search but inspect, their records to ascertain whether there are stolen auto parts on the premises. Now the legal proceedings subsequently to the fine or not to fine

> would be followed according to law * * * it is an inspection and not a search." (82d Ill. Gen. Assem., Senate Proceedings, May 20, 1982, at 43-44.)

This legislative history illustrates the legislature's intention that the purpose of inspection be narrowly limited to checking records, and not to include the general authority—including the authority to seize evidence—given to police in conducting searches. It also makes clear that judicial approval would be necessary to expand an inspection conducted pursuant to the statute beyond its narrowly drawn purposes.

Furthermore, contrary to the State's assertions that the warrant requirement is meaningless in this context, we find that it serves a useful purpose. As originally enacted, the statute authorizing warrantless administrative inspections contained no guidelines concerning how the inspections were to be conducted and no limits on the discretion of the State in making inspections. Both this court and the Federal district court held the statute unconstitutional under the standards established in *Donovan v. Dewey* (1981), 452 U.S. 594, 69 L. Ed. 2d 262, 101 S. Ct. 2534. (*People v. Krull* (1985), 107 Ill. 2d 107, 116, *rev'd on other grounds* (1987), 480 U.S. ____, 94 L. Ed. 2d 364, 107 S. Ct. 1160; *Bionic Auto Parts & Sales, Inc. v. Fahner* (N.D. Ill. 1981), 518 F. Supp. 582, *aff'd in part & vacated in part* (1983), 721 F.2d 1072.) The statute was then amended to include safeguards designed to limit State officials' discretion by restricting the manner in which warrantless inspections could be conducted. The State concedes that the current statute is strictly limited and that the requirements of section 5-403(6) are safeguards for conducting warrantless inspections. The constitutionality of the statute as amended has been upheld. (*Bionic Auto Parts & Sales, Inc. v. Fahner* (7th Cir. 1983), 721 F.2d

1072.) Given this background, we do not find it inconceivable that the legislature enacted section 5-403(6) to serve a useful function: to protect against the possible abuses of administrative searches by requiring that the neutral judgment of a magistrate or judge be obtained before allowing State officers to seize evidence of criminal activity uncovered during inspections.

Neither can we accept the State's contention that the appellate court's decision in *People v. Potter* (1986), 140 Ill. App. 3d 693, authorizes unlimited warrantless search and seizure under the statute for the first 24 hours of an administrative inspection. *Potter* simply requires that if an inspection has gone on for 24 hours, the State must then obtain a warrant before any further search is authorized. The fact that a warrant is required under these circumstances does not, however, carry the negative implication that through the first 24 hours of an inspection the State has *carte blanche* to search and seize as it wishes. As we read it, the statute requires a warrant whenever evidence of a criminal violation is uncovered, prior to seizure of that evidence.

The State also argues that the statute's requirement of a warrant serves no fourth amendment purpose. Although we decide this case on purely statutory grounds, we note that the primary purpose of the exclusionary rule is " 'to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures.' " (*Illinois v. Krull* (1987), 480 U.S. ____, ____, 94 L. Ed. 2d 364, 373, 107 S. Ct. 1160, 1165, quoting *United States v. Calandra* (1974), 414 U.S. 338, 38 L. Ed. 2d 561, 94 S. Ct. 613.) In failing to obtain a warrant before seizing the certificates of title in this case, the police officers acted in defiance of a State statute. This is precisely the type of

situation in which application of the exclusionary rule works to deter future police misconduct and preserve the protections of the fourth amendment. Thus it is clear that the trial and appellate court decisions excluding the evidence furthered the purpose underlying the fourth amendment's exclusionary rule.

The State's reliance on an exigent-circumstances rationale for the warrantless search is also erroneous. Application of an exigent-circumstances exception to the warrant requirement will be made only where the situation, considering all the facts, necessitated immediate action by the police. The State has failed to bring any facts to our attention that indicate any exigent circumstances existing when the officers seized defendant's certificates of title, and we agree with the appellate court that there is no evidence that the officers had insufficient time to get a search warrant before the courthouse closed. The cases cited by the State in support of application of an exigent-circumstances exception, *Carroll v. United States* (1925), 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280, and *Chambers v. Maroney* (1970), 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975, were both based on the differences between searches of automobiles and searches of homes or offices. As stated in *Chambers*, "the opportunity to search [a vehicle] is fleeting since a car is readily movable." (*Chambers*, 399 U.S. at 51, 26 L. Ed. 2d at 428, 90 S. Ct. at 1981.) Obviously, the rationale justifying search and seizure of vehicles in these cases cannot be construed to justify the seizure of evidence in the salvage yard in this case.

The State next argues that even if the evidence seized in this case is subject to exclusion, it should not be excluded due to the good-faith or plain-view exceptions to the exclusionary rule. The United States Supreme Court recognized a "good faith" exception to the exclusionary

rule in *United States v. Leon* (1984), 468 U.S. 897, 82 L. Ed. 2d 677, 104 S. Ct. 3405, and expanded that exception in *Illinois v. Krull* (1987), 480 U.S. ____, 94 L. Ed. 2d 364, 107 S. Ct. 1160. In *Leon*, the Court held that evidence seized on the authority of a search warrant later found to be invalid need not be excluded if the police officer's reliance on the warrant was objectively reasonable. The Court reasoned that to exclude evidence under these circumstances would not serve the basic purpose of the rule—deterring police misconduct—because at the time of the search and seizure the police officer was acting as a reasonable police officer should.

On the same rationale, the Court in *Krull* extended the good-faith exception to situations in which a police officer conducts a search and seizure under the authority of a statute later found to be unconstitutional:

> "Unless a statute is clearly unconstitutional, an officer cannot be expected to question the judgment of the legislature that passed the law. If the statute is subsequently declared unconstitutional, excluding evidence obtained pursuant to it prior to such a judicial declaration will not deter future Fourth Amendment violations by an officer who has simply fulfilled his responsibility to enforce the statute as written." *Krull*, 480 U.S. at ____, 94 L. Ed. 2d at 375, 107 S. Ct. at 1167.

Obviously, *Leon* and *Krull* are not controlling here, as the police officers in this case were relying neither on an invalid warrant nor on a statute later held to be unconstitutional. Instead, the State argues that we should extend the good-faith exception to situations where a police officer reasonably relies on his own interpretation of a valid statute in conducting a search and seizure, when that statute is later judicially interpreted to prohibit such seizure.

We reject the State's argument because under *Leon* and *Krull* the officer's good faith alone is not sufficient to validate the search and seizure; the officer must also be acting on the authority of a seemingly valid warrant or statute. Here, there is no such reliance, but quite the opposite. The officers were acting in defiance of, not reliance on, the language of a statute limiting the authority of officers to inspection of the premises and a records check for accuracy and completeness.

Moreover, to adopt the extension of the good-faith exception proposed by the State would essentially eviscerate the exclusionary rule as it is currently enforced. Police officers would be encouraged to defy the plain language of statutes as written in favor of their own interpretations in conducting searches and seizures. Such a proposal, giving the police unlimited authority to conduct searches and seizures until specifically restricted by the legislature or the courts, is fundamentally at odds with the central purpose of deterring police misconduct which underlies the exclusionary rule.

The State's reliance on the plain-view doctrine is similarly misplaced. Under the doctrine, evidence seized by officers in the absence of a warrant is nevertheless admissible if three conditions are met. First, police must be properly on the premises through a warrant or an exception to the warrant requirement. Second, the police must discover the evidence inadvertently, not knowing in advance the location of the evidence. Finally, it must be immediately apparent that the item observed may be evidence of a crime, contraband, or otherwise subject to seizure. (*Coolidge v. New Hampshire* (1971), 403 U.S. 443, 464-71, 29 L. Ed. 2d 564, 582-86, 91 S. Ct. 2022, 2037-41 (plurality opinion); *People v. Wilson* (1987), 116 Ill. 2d 29, 51-52 (seizure valid where police lawfully on premises and items

seized were in plain view); *People v. House* (1986), 141 Ill. App. 3d 298, 300-02 (three requirements of the plain-view doctrine outlined).) The State argues that we should extend the plain-view exception to the circumstances of this case. This court has never applied the doctrine to facts even remotely similar to those in this case, and we see no reason to do so now.

We agree with the appellate court that a lengthy analysis under the plain-view doctrine is not necessary where, as here, the officers were searching for precisely the objects found. Certificates of title contained within defendant's records, although coming into the view of the officers during the course of the inspection, cannot be seriously considered as having been in "plain view," and discovery pursuant to a deliberate search of these records can hardly be deemed inadvertent. As the Supreme Court noted, "it is important to keep in mind that, in the vast majority of cases, *any* evidence seized by the police will be in plain view, at least at the moment of seizure." (Emphasis in original.) *Coolidge*, 403 U.S. at 465, 29 L. Ed. 2d at 582, 91 S. Ct. at 2037.

Finally, even if we were to find that under the language of section 5-403 a warrant was not necessary for seizure of the titles discovered during the inspection, under the facts of this case the evidence would still be excludable. One of the police officers who conducted the search testified that the inspection was in response to a complaint concerning the condition of defendant's premises. When asked, "[The complaint] had nothing to do with car titles, did it?" the officer responded, "No, Sir, it did not."

One of the fundamental principles of administrative searches is that the government may not use an administrative inspection scheme as a pretext to search for evi-

dence of criminal violations. (See *Michigan v. Tyler* (1978), 436 U.S. 499, 56 L. Ed. 2d 486, 98 S. Ct. 1942; *Donovan v. Dewey* (1981), 452 U.S. 594, 69 L. Ed. 2d 262, 101 S. Ct. 2534; *Almeida-Sanchez v. United States* (1973), 413 U.S. 266, 37 L. Ed. 2d 596, 93 S. Ct. 2535; *Abel v. United States* (1960), 362 U.S. 217, 4 L. Ed. 2d 668, 80 S. Ct. 683.) Thus, if "the primary object of the search is to gather evidence of criminal activity" a search warrant based on probable cause must be obtained. (*Michigan v. Clifford* (1984), 464 U.S. 287, 294, 78 L. Ed. 2d 477, 484, 104 S. Ct. 641, 647.) Here, the search was initiated not for the purpose of inspecting the records, as authorized by the statute, but in response to complaints about the condition of the premises. The clear implication is that the police were conducting the inspection as a pretext for placating defendant's neighbors or in order to find criminal violations.

In *People v. Potter* (1986), 140 Ill. App. 3d 693, our appellate court faced a similar situation. There, the State's Attorney had received information that defendants (used-car dealers) had sold cars with their odometers turned back. Because there was insufficient evidence to obtain a search warrant for defendant's dealership, the State's Attorney instead conducted a warrantless administrative search under section 5-403. Evidence of altered odometers was uncovered, and defendants were indicted. The appellate court affirmed the trial court's suppression of evidence discovered in the inspection. By comparing the purpose of the statute—to combat the trade in stolen vehicles and parts—with the purpose underlying the search conducted of the dealership, the court concluded that the inspection was merely pretextual and that even "the most charitable reading of these statutes cannot validate the searches in question." 140 Ill. App. 3d at 697.

Similarly, the administrative inspection in the present case was not implemented in order to further the purposes of the statute, but merely in response to neighbors' complaints unrelated to the purpose of the statute. Evidence obtained as the result of such an abuse of the authority to inspect given by the statute and without the warrant contemplated by the statute is clearly inadmissible against defendant.

For the reasons stated, the judgment of the appellate court is affirmed.

Judgment affirmed.

APPENDIX D

Order Of The Supreme Court Of Illinois Denying Petition For Rehearing

(Letterhead Of)

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

April 5, 1988

State's Attorneys Appellate Prosecutor
Third Judicial District
P. O. Box 654
Ottawa, IL 61350

No. 64584—People State of Illinois, appellant v. Lowell Madison, appellee. Appeal, Appellate Court, Third District.

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on April 15, 1988.